

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, Lucknow BENCH

OA/TA/RA/CP/MA/PTof 20.....

.....Gingacharya.....Applicant(S)

Versus

.....C.O.F. 4028.....Respondent(S)

INDEX SHEET

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Certified that the file is complete in all respects.

B/C needed draft - destroyed

Signature of S.O.

Signature of Deal. Hand

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 386 of 1989/90 (2)

APPLICANT(S) Shri. Ganga Charan Sethi
RESPONDENT(S) V. C. I. Sethi

Particulars to be examined

Endorsement as to result of examination

1. Is the appeal competent ?
2. a) Is the application in the prescribed form ?
b) Is the application in paper book form ?
c) Have six complete sets of the application been filed ?
3. a) Is the appeal in time ?
b) If not, by how many days it is beyond time?
c) Has sufficient case for not making the application in time, been filed?
4. Has the document of authorisation/ Vakalatnama been filed ?
5. Is the application accompanied by B.D./Postal Order for Rs.50/-
6. Has the certified copy/copies of the order(s) against which the application is made been filed?
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?
c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents been filed and paging done properly ?
9. Have the chronological details of representation made and the out come of such representation been indicated in the application?
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal?

26/11/90

04/11/90
26/11

Yes

Particulars to be Examined

Endorsement as to result of examination

Only in main copy (8)

1. Are the application/duplicate copy/extra copies signed?
2. Are 2 extra copies of the application and documents filed?
3. Identical with the Original?
4. Corrective?
5. Missing documents
6. Missing pages Nos _____?
7. Are the file size envelopes containing full addresses of the said clients been filed?
8. Are the given address the correct address?
9. Do the names of the parties appear in the copies tally with those indicated in the application?
10. Are the translations certified to be true or supported by an affidavit affirming that they are true?
11. Are the facts of the case mentioned in item no. 16 of the application?
12. a) Handwritten
b) Under distinct heads?
c) Numbered consecutively?
d) Typed in double space on one side of the paper?
13. Have the particulars for interim order prayed for indicated with reasons?
14. Whether all the remedies have been exhausted.

yes

yes

N/A

yes

yes

N/A

Handwritten

yes

yes

yes

yes

*26.11.90
N.K.*

Put up before the Hon. Bench

*on 22/11/90 for orders.
[Signature]
21/11/90*

*?
Sd/-
26/11*

Hon. Mr Justice K. Nath. V.C.
Hon. Mr. M. M. Singh, A.M.

(1/3)

put up tomorrow for admission.
on 28.11.90.

M. M. Singh
A.M.

[Signature]
V.C.

20.11.1990

Hon'ble Mr. Justice K. Nath, V.C.
Hon'ble Mr. M.M. Singh, A.M.

Admit.

Issue notice to respondents
to file a counter within four weeks
to which the applicant may file a
rejoinder within two weeks thereafter.
List for final hearing on 09.01.1991.

See
original order
on
main petition

Sd/-
A.M.

Sd/-
V.C.

Notice issued
8
26.12.90

OR

Notices were issued
on 6.12.90.

Neither reply nor
any written reply has
been received from

S.F.Y.

7/1/91

3/1
Counsel

9.1.91
D.R.

Mr. D.P. Srivastava for
the applicant has made
appearance on behalf
of the applicant's side.
D.P. is absent and he
did not file counter
till today. He is ordered
to file C.A. by 31.1.91.

04326/402

10.4.91

D.R.

Both the parties are
absent today No
appearance has been
made on behalf of
the respondent.

Sufficient opportunity,
has also been granted
to O.P. But counter-
has not been filed
so far. case is listed

on 24.5.91

24.5.91

D.R.

Both the parties are
absent today. Counter
has not been filed till
today. Respondent to
file counter by 24/7/91.

24.7.91

D.R.

Applicant's side is
present. O.P. is absent.
Counter has not been
filed till today. List
the case for filing counter
on or before 21/8/91

22.5.92

D.R.

(1/2)

counsel for Applicant

is present. No counter

has been filed till

today. Respondent

to file counter by

on

17/7/92

AKC
22/5/92
sc

17.7.92

D.R.

counsel for the

applicant is present

No appear for the

Respondent. Respondent

to file counter by

15/9/92.

✓

15.9.92

D.R.

Applicant's side is present.

Counter has not been filed.

Let it be filed by

17/11/92.

✓

Central Administrative Tribunal
Lucknow Bench, Lucknow.

.....

ORDER SHEET

O.A./T.A. No. 386/11

Date / Office Report

Order

24/4/11

24.4.11 - The case filed in the name of the respondent, who has been appointed as a...

The respondent has been appointed as a...
The respondent has been appointed as a...
The respondent has been appointed as a...
The respondent has been appointed as a...
The respondent has been appointed as a...

17/11

17/11

17/11

NISH/-

O.A. No.

Mr.

1037/82

(X)

Dated : 12.3.93

1st 386/82

Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, A.M.

Admit. Issue notice. CaA. may be filed
within 4 weeks and R.A., if any, may
be filed within 2 weeks list thereafter.
List this case on 20/4/93 before
DR(J) for completion of pleadings.

A.M.

V.C.

(g.s.)

not to be
basic
8/10/93

28/4/93
D.R.

Both the Counsel for
the applicant is present.
Respondents are not present.
The counter filed today.
The same may be filed on the
date fixed. List them on
before me on 26/5/93.

oil
Counsel
8/10/93

26/5/93

Both the parties are absent.
C.A. has not been filed.
Respondent's are directed to
file it by 22/7/93.

AT

25/5/93

~~1/2~~

07/10/93
D.R.

Both the parties are present. Counter has been filed. R.A. if any may be filed on the date fixed. List this case for R.A. before D.R. on 13/10/93.

on

13/10/93

D.R.

Both the ~~parties~~^{OK} parties are not present. C.A. filed but R.A. has not been filed yet. Applicant is directed to file it by 20/11/93.

~~C. A.~~
C.A.

~~1/2~~

22.11.93

D.R.

Applicant is directed to file R.A. on 17.11.93.

~~1/2~~

17.11.94

17/11/94
D.R.

Shri. P. F. Srinivasa is present. C.A. filed. Applicants to file R.A. on the date fixed List on 1/2/94. before me.

~~1/2~~

~~1/2~~

D.R.

C.A. No. 356/2000

21/4/94.

D.R.

Both the parties are present.

C.A. filed. R.A. has not been filed. Applicant is directed to file it by 20/6/94 before me.

✓

Amit

D.R.

OK
R.A. not filed
Submitted for
the same
before me
20/6/94

20/6/94
D.R.

Parties are not present.
C.A. filed but R.A. has not been filed. Applicant to file it by 24/8/94 before me.

✓

Amit

D.R.

C A 386/90

31-1-95

Hon. Mr. Justice B.L. Saksena, VC.
Hon. Mr. V.K. Seth, A.M.

(101)

on the adjournment application
of learned counsel for
the applicant, the case is
adjourned to 1-3-95 for hearing

2
S.A.H.
28/1/95

L.S.
A.M.

Boh
VC

B

1-3-95

Hon. Mr. V.K. Seth, A.M.
Hon. Mr. D.C. Verma, J.M.

on the request of Counsel
for applicant adjourned to 10-4-95

L

J.M.

L.S.
A.M.

10-4-95

Hon. Mr. V.K. Seth, A.M.
Hon. Mr. D.C. Verma, J.M.

on the request of Counsel for
applicant adjourned to 5-5-95

L

J.M.

L.S.
A.M.

2
S.A.H.
31/7/95

5-5-95

Hon. Mr. V.K. Seth, A.M.
Hon. Mr. D.C. Verma, J.M.

on 6-5-95

L

J.M.

L.S.
A.M.

11/3/76

Hon. Mr. Justice B.C. Sankar, VC
Hon. Mr. V.K. Seth, J.M.

BoL
VC

The learned counsel for applicant
has not filed reply dated 15.3.76

11/3/76
15/3/76

VC
J.M.

BoL
VC

15.3.76 - For Mr. V.K. Seth J.M.
Hon. Mr. VC Sankar J.M.
Name of applicant
Sh. S.G. Verma for respondents.
Dated 15.3.76.

VC
J.M.

VC
J.M.

12

1.6.76 Hon. Mr. Justice B.C. Sankar, VC.
Hon. Mr. V.K. Seth, J.M.

Sh. S.G. Verma has learned
counsel for applicant has not
advised applicant application.

Dated on 6.7.76

VC
J.M.

BoL
VC

11/3/76
15/3/76

8.7.76

Sh. Sankar D. Sankar
26.8.76

BoL

26.8.76

Hon. Mr. V.K. Seth J.M.
Hon. Mr. D.C. Verma J.M.

Name of applicant
Name of respondent
Name of counsel
Name of counsel

VC
J.M.

1880

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
LUCKNOW BENCH, LUCKNOW.

Original Application No. 386 of 1998.
T.A.R.A./C.C.P.No. of 1998.

Date of Decision: 01.6.99

Ganga Chandra & others.....Applicant
None Advocate for applicant

Versus

.....U.O.I. & others..... Respondents
.....None Advocate for
Respondents

CORAM

HON'BLE MR. D.C. Verma, JM

HON'BLE MR. A.K. Mishra, DM

1. Whether reporter of local papers may be allowed to see the judgment. +
2. To be referred to the reporter or not ? +
3. Whether their Lordships wish to see the fair copy of the judgment? +
4. Whether to be circulated to other benches ? +

f
Vice chairman/member

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH

LUCKNOW

Lucknow this the ^{1st} day of ~~May~~^{June}, 99.

O.A. No. 386/90

HON. MR. D.C.VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

1. Ganga Chanraⁿ, son of Babu lal aged about 36 years, resident of village Shahsadpur, P.O. Rupauo, District Unnao.
2. Ram Kumar, son of Mahabir Prasad, aged about 33 years, resident of village Hastinapur District Unnao.
3. Radhey Lal, son of Bhagwan deen aged about 31 years, resident of Lucknow.
4. Ram Kishore, son of Mahabir aged about 31 years, resident of village Hastinapur P.O. Hasanganj, Lucknow.
5. Ram Lakhan Tewari, son of Shri Motilal Tewari, aged about 31 years, resident of village Behta. P.O. Dewera Klan, Unnao.

Applicants.

None for applicants.

versus

1. Union of India through its General Manaer, N. Railway, baroda Bouse, New Delhi.
2. D.R.M. N. Railway, Hazratganj, Lucknow.
3. Station Superintendent Northern Railway Lucknow.
4. Assistant Personnel officer, Northern Railway, Hazratganj, Lucknow.

Respondents.

None for respondents.

O R D E R

D.C.VERMA, MEMBER(J)

Five applicants of this O.A. have prayed for a direction to the respondents to empanel the applicants and issue orders of appointment and posting against regular group D post treating

✓

the applicants in continuous service right from the month of June, 1988 with all consequential benefits and to pay the entire salary. Further prayer is to quash the order dated 9.8.90 contained in Anneuxre-1 to the O.A.

2. The brief facts of the case are that the applicants, filed O.A. No. 105/88 before Lucknow Bench of the Tribunal claiming therein that they have been working as Substitute porters. The relief was to allow them to continue to work as Substitute Porters and to restrain the respondents from giving effect to the order dated 25.7.88 by which they were not allowed to continue to work as Substitute Porters.

2. The O.A. was decided by a Division Bench of this Tribunal on 23.4.90 by observing that while the relief claimed by the applicant cannot be granted, the respondents were directed to consider the case of the applicants sympathetically. Thereafter, the respondents considered the case of the applicants and passed the order Annexure 3- dated 9.8.90 which is impugned in the present O.A.

3. In this O.A. again the case of the applicants are that they were initially engaged as substitute porters and they have been working as such but they were wrongly disengaged w.e.f. 25.7.88. The claim is that as the applicants had worked for more than 120 days, continuously, they are under section 25(B) of the Industrial Disputes Act, 1947, entitled to the benefit.

4. The respondents have filed counter reply and have stated that the applicants were initially engaged as casual labour on day today basis and they were duly screened by a Screening Committee on 7.9.90. As the applicants were not found suitable, they were not placed on



the panel of successful candidates.

5. As none appeared on behalf of the parties, we ourselves perused ^{the} pleadings on record and have considered the grounds taken in the O.A. to challenge the order impugned in the case.

6. In the earlier O.A. No.105/88 also the applicants had claimed as Substitute Porters, ~~but~~ The Tribunal, after considering in detail held that "it is clear that though the applicants have been engaged in casual vacancies, they cannot be considered substitute which has a special meaning in terms of railway rules." Thus, a finding has been recorded that the applicants were not substitutes and were only casual workers. The same claim cannot be allowed to be re-agitated in subsequent proceedings.

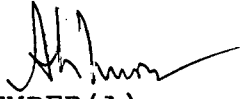
7. While disposing of the O.A., the Tribunal had merely directed to consideration of the case of the applicant sympathetically, ~~that~~ ^{the claim has been} been done by the respondents. and/ rejectd by Anneuxre 1 dated 9.8.90. The relief which ^{was} claimed in the earlier O.A. (O.A. No. 105/88), cannot be allowed to be re-agitated, as there is a clear cut finding that the applicants were not substitute porters. Besides, as per recitals made in the Counter reply, all the applicants were screened by a duly constituted screening committee on 7.9.90 and screening committee did not find them suitable. This fact has not been specifically denied by the applicant in ~~their~~ Rejoinder Affidavit. Thus, if the applicants were screened and were found not suitable they could not have been empanelled. The relief claimed in the present O.A. cannot be granted.

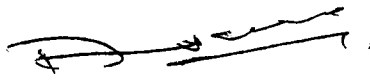
8. The applicant's claim that there has been artificial break with the purpose of depriving

the applicants of their due, is found not substantiated.

9. The order of disengagement was challenged in the earlier O.A. No. 105/88 and the disengagement order was not found invalid, and therefore, continuity of service cannot be claimed w.e.f. the said date. Besides, ~~it~~, admittedly, none of the applicants have been engaged thereafter and therefore, the continuity cannot be granted. The claim of the applicants for empanelment and appointment to a regular Group D post, has therefore, no merit.

10. The O.A. is dismissed. Costs easy.


MEMBER(A)


MEMBER(J)

Lucknow; Dated: 01.6.79

Shakeel/

IN THE CENTRAL ADMINISTRATIVE
LUCKNOW BENCH, LUCKNOW BUNAL

O.A. NO. OF 1990.

Ganga Charan and others Applications

Versus

Union of India and others Respondents.

I N D E X

COMPILATION NO. I

SL.NO.	Description of papers	Page No.
1.	Application	1 - 12
2.	Annexure - 1 Order dated 9.8.1990 issued to the applicants separately.	13 - 00
3.	Power (Vakalatnama)	14 - 00

Lucknow Dated:
November 23, 1990.

रामकुमार

APPLICANT.

[Signature]

(1/1)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A. NO. _____ OF 1990

26/11/90
211
26/11

1. Ganga Charan, son of Babu Lal, aged about 36 years, resident of Village Shahsādpur, P.O. Rupauo, District Unnao.
 2. Ram Kumar, son of Mahabir Prasad, aged about 33 years, resident of Village Hastinapur (Gayadeen Khera) P.O. Hasanganj, District Unnao.
 3. Radhey Lal, son of Bhagwan Dean, aged about 31 years, resident of V. & P. District Lucknow.
 4. Ram Kishore, son of Mahabir, aged about 31 years, resident of Village Hastinapur (Gayadeen Khera) P.O. Hasanganj, Lucknow.
 5. Ram Lakhan Tewari, son of Sri Moti Lal Tewari, aged about 31 years, resident of Village Behta, P.O. Dewera Kalan, District Unnao.
- Applicants

VERSUS

1. Union of India, through its General Manager, Northern Rly., Baroda House, New Delhi.
Divisional
 2. ~~Additional~~ Railway Manager, Northern Railway, Hazratganj, Lucknow.
 3. Station Superintendent, Northern Railway, Lucknow.
 4. Assistant Personnel Officer, Northern Railway, Hazratganj, Lucknow.
- Respondents.

DETAILS OF APPLICATION.

- 21 May 2012
1. Particulars of the order against which the application is made:

The instant application is being filed challenging the validity of the action of the Respondents in

W
28

not regularising, absorbing and posting the applications as regular Porters. The Respondents have arbitrarily and discriminatorily deprived the applicants from being posted as regular Porters. The applicants are also challenging the validity of the order dated 9.8.1990 declining to give any benefit to the applicants working as substitute Porters. A true copy of one of such aforesaid order dated 9.8.1990 issued to the applicants in their names separately is being filed herewith as annexure-1 to this application.

ANNEXURE-1

2. Jurisdiction of the Tribunal:

The applicants declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. Limitation:

The applicants further declare that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case :

4.1 That the applicants while functioning as substitute Porters were screened for regular absorption but were neither empanelled ^{nor posted} as regular porters malafidely and arbitrarily while various juniors to the the applicants having lesser number of working days and lesser ability and suitability have been empanelled and absorbed arbitrarily.

4.2 That so far ^{as the} facts of the case are concerned the applicants were initially appointed as Substitute Porters against short term vacancies sometimes between 1975 to 1977. The dates of their initial appointments are being mentioned as under:-

<u>Name</u>	<u>Dt. of initial apptt.</u>
1. Ganga Charan	14.4.1976
2. Ram Kumar	20.4.1975
3. Radhey Lal	20.9.1977
4. Ram Kishore	14.4.1977
5. Ram Lakhon Tewari	25.12.1977

4.3 That since their initial appointment the applicants are continuing as such without interruption which has been created artificially in the garb of

Filed today
26/11

25/11/12

(A/2)

administrative need with the sole purpose to deprive the applicants from due benefits. Any way the applicants are lastly continuing without any interruption from the year 1983-84 and have thus already completed more than one year of continuous service within the meaning of Section 25-B of the Industrial Disputes Act 1947 (hereinafter referred to as 1947 Act).

- 4.4 That the work and conduct of the applicants have always been found excellent. They have always devoted and dedicated to the work entrusted to them and have never been warned or punished in any manner whatsoever.
- 4.5 That the applicants have also completed more than 120 days of continuous service and are enjoying the pay scale and all other benefits available to a regular Porter of the Northern Railway, Lucknow. The applicants have always been treated as regular Porter of Northern Railway, Lucknow and have always been given all the facilities and privileges admissible to a railway servant. Practically the applicants are the railway servants as defined in Paragraph 102(13) of Indian Railway Establishment Code Vol. I and as such the applicants' conditions of service are governed by the Rules and regulation applicable to a holder of that post.
- 4.6 That while the applicants were functioning to the entire satisfaction of their superiors they shocked when on 25.7.1988 they were stopped by the Respondent No. 3 from working as Porters without intimating any reason. The applicants have neither been given any notice nor one month's pay in lieu thereof.
- 4.7 That being aggrieved of the illegal and callous action of the Respondent No.4 in not allowing the applicants to work as usual, the applicants filed an Original Application No. 105/88(L) in the Hon'ble Administrative Tribunal, Lucknow Bench, Lucknow inter alia praying that the Respondents be directed to allow the applicants to work as usual and pay them salary and further pass appropriate orders absorbing the applicants as regular Porter

2TH 3412



in as much as they have already completed more than three years of continuous service as substitute Porters.

- 4.8 That thereafter the Respondents prepared and filed counter reply narrating the facts that the applicants were not engaged as Substitute Porters but were simply engaged as casual labours and as such according to the provisions of law applicable to the casual labours the case of the applicants will be considered for regular absorption. It was also contended by the Respondents that the applicants ought to keep stringent vigil on work so that they must ^{come} give and demand for the work on its availability otherwise the Respondents will give the work to the available casual Porters without having any consideration for the seniority.
- 4.9 That as the aforesaid act of the Respondents was absolutely against the labour laws besides the provisions of Railway Establishment Code and Manual and was ^{promoting} ~~permitting~~ the policy of hire and fire tantamounting to unfair labour practice, the applicants strongly opposed it in their Rejoinder reply and also filed several documents indicating that they were never engaged as casual labours and were indeed engaged as Substitute Porters against the continuing vacancies on regular scale of pay and all other benefits attached with the post available to the holder of post like Pass privilege etc.
- 4.10 That although the Rejoinder reply was already filed yet some how or the other the Hon'ble Tribunal gathered from record on 3rd March, 1989 that the Rejoinder reply was not filed and consequently the applicants' application was disposed of by the Hon'ble Central Administrative Tribunal on the next date i.e. on 17.4.1990. merely on the basis of the averments placed on behalf of the Respondents. An application for recalling the order reserving the judgment on the application dated 17.4.90 was moved immediately by the applicants on 19.4.90 but the judgment reserved was pronounced on 23rd April 1990 without any orders on the aforesaid application dated 19.4.1990 which is pending for orders. The

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(A/c)

applicants thereafter moved an application for review of the ~~afms~~ aforesaid judgment dated 23.4.90 on 16.5.90 which is also pending. A true copy of the aforesaid judgment dated 23.4.90 is being filed herewith as Annexure-2 to this application.

ANNEXURE-2

- 4.11 That a perusal of the aforesaid judgment contained in Annexue-1 to this application will reveal that the Hon'ble Tribunal was pleased to direct the respondents to consider the case of the applicants for the relief they are entitled to within a period of two months, as a sequel to which a letter dated 6th July 1990 was issued to the applicants under the signatures of Respondents-4 intimating that their cases were being examined by the competent authority in compliance of the directions of the judgment dated 23.4.1990. All the applicants were communicated the same letter with the change of name and the addresses of the applicants. A true copy of one of such ~~it~~ letters dated 6.7.1990 is being filed herewith as Annexure-3 to this application.

ANNEXURE-3

- 4.12 That thereafter vide letter dated 9th August 1990 the applicants were informed that all the cases were examined by the competent authority in compliance of the directions of the Hon'ble Tribunal and it was found that the applicants were not entitled to continue to work as Substitute Porters. All the applicants were informed by the letter containing similar matters with the change of their names and addresses. One of such letters dated 9.8.1990 Passed by the competent authority has already been filed as Annexure-1 to this application.
- 4.13 That thereafter the applicants ^{were} served with a letter dated 17.8.1990. By dint of this letter the applicant who were designated as Substitute Porters, were informed that their cases will be screened by the Screening Committee for the purposes of absorption, posting and appointment on regular basis on Group 'D' posts. All the applicants were issued similar cyclostyled letters containing similar facts containing their names and addresses separately. All the applicants were designated as Substitute Porters. A true copy of one of such letters dated 17.8.1990

रामकुमार

RAJ

ANNEXURE-4

is being filed herewith as annexure-4 to this application.

4.14 That thereafter the applicants presented themselves before the Screening Committee along with all requisite papers. The applicants were asked nothing by the Screening Committee except their names and their father's name. Some of the applicants were also asked to lift a sand bag on their head which they successfully did.

4.15 That as the applicants were fully eligible and seniors serving under the Respondents for the last several years, they were ⁿsagune enough about their being empanelled and absorbed against regular posts, but they shocked to know that neither the applicants were empanelled nor given posting against the regular posts of group 'D' while various junior persons and the new persons who never worked in the Railways were given regular appointment and posting against the regular Group 'D' posts. The names of some of such persons are Sarvasri Munna Lal, son of Ram Saran, Ram Chandra, son of Ram Bali, Ram Shanker son of Ram Das, Prem Bahadur son of Jwala Prasad, Chandra Bali son of Shyam Sunder, Shiv Narain son of Din Raj Prasad, Babu Ram son of Shree Krishan Yadav, Rajaram son of Chedi Lal, Chhittar Pal son of Ram Dayal, Sohan Lal Tewari, son of Shree Krishan Tewari, Shiya Ram son of Shree Krishan, Shree-e Ram Singh son of Barsati, O.P. Yadav son of B.L. Yadav, Ram Khilawan son of Data Ram, Shiv Ram son of Raghu-nath Prasad, Ram Niwas son of Ram Gopal Tewari etc

4.16 That the Respondents have not issued the result of the aforesaid screening nor any list of successful candidates has been declared but they have directly issued appointment, posting letters to the persons arbitrarily. As a sequel to it no body could know about his fate in the screening. The applicants came to know of this fact when they found that juniors to them have been called for postings and appointments.

रामकुमार



4.17 That the applicants are substitute porters and as such they have been paid salary in regular scale scale of pay as they were engaged to work against a substantive vacancies which were lying vacant due to non availability of the regular employees. The applicants were also given all the benefits of a Railway servant holding the post of Porter like privilege pass, P.T.Os etc. As the applicants have already completed more than three years of continuous service they acquired the status of quasi permanent ^{railway servant} and they also acquired the status of a temporary railway servant on completion of 120 days of continuous service.

4.18 That it is worthwhile to mention that para 2315 to 2319 of Railway Establishment Manual (old edition), was published by the Government of India, Ministry of Railways, contemplates the conditions of service of substitute porter. The substitutes are different from the casual labours. For the sake of ready reference a photo-state copy of para 2315 to 2321 of the aforesaid Railway Establishment Manual and the para showing distinction between substitutes and casual labours given in ~~cap~~ Chapter XXXVI of the Railway Establishment Manual (latest edition), by Jand are being filed herewith as Annexures-5 and 6 to this Application.

ANNEXURES-5
AND 6.

4.19 That the applicants have been screened to complete the legal formalities without actually screening them. If the applicants are properly screened, the applicants who are serving as substitute porter for the last several years continuously will definitely be found suitable to be absorbed and appointed against the regular Class IV posts.

4.20 That the process of screening does not ~~involve~~ involve the element of comparison or comparative merit. The call letters are issued on the basis of seniority and once it is found that the past records of the employees is satisfactory, he is normally selected to be empanelled and absorbed. The senior employees are ~~gr~~ given the benefits of appointment and posting in preference to the juniors.

राम कुमार

18/20

- 4.21 That there was no question put to the applicants which they failed to reply. The question which they faced before the screening Committee was to answer their names. They were thereafter asked to lift a sand bag which they successfully lifted in one attempt. Nothing further was asked or enquired from them, but the applicants were neither declared selected nor empanelled nor any letter of regular appointment was issued to them. On the ~~ha~~ other hand the applicants have already been restrained from functioning as substitute porters against the posts on which they were functioning from past without any rhyme or reason albeit the said posts were available and no claimant had come to substitute the applicants.
- 4.22 That the Respondents have completely eschewed the process of fair screening and they have simply adopted pick and choose policy to choose the candidates of their own choice who succeeded to persuade them by making link in one way or the other. The applicants being peniless and poor persons failed to adopt such tacticts and consequently nothing could come to rescue them.
- 4.23 That screening is made in order to judge the suitability of working of a substitute for absorption in regular service. It is ~~not~~ incumbent upon the Respondents to empanel the employees found suitable in the screening for the purposes of regular absorption as per the provisions contained at page 773 of Railway Establishment Manual (latest edition) by M.L.Jand. In the instant case the Respondents have prepared no such panel before issuing the letters of appointment and posting.
- 4.24 That while working as Substitute Porters under the Respondent No.4, the applicants were restrained from functioning on the ~~postxof~~ basis of some telephonic message according to which it was instructed not to allow the casual labours to work further without written permission of senior Divisional Operating Superintendent Northern Railway, Lucknow. Although ~~these~~ these instructions had nothing to do with the applicants yet the applicants were restrained from

रामकुमार

functioning which was indeed their termination from service. As the applicants were neither given one month's notice indicating the reason for their termination of service nor the provisions of Section 25-F of Industrial Dispute Act 1947 was followed, the restrained order against the applicants rendered null and void in the eye of law and thus the applicants are still in service in the eye of law and are entitled to work and to get salary. The applicants had already completed more than one year of continuous service on 18.6.1988 when the such message was passed on to restrain the applicants from functioning. A true copy of the aforesaid message as recorded in the ^{office diary} copy of the Assistant Station Master on duty is being filed herewith as Annexure-7 to this application.

ANNEXURE-7

4.25 That the Respondents are filling the post of regular Group 'D' employees clandestinely and if all the posts are filled in, the applicants will not be able to ^areap the benefit of this application. It is therefore expedient in the interest of justice that this Hon'ble Tribunal may kindly be pleased to direct the Respondents to keep 5 posts of regular group 'D' employees in reserve during the pendency of the case and further allow the petitioner to work as usual and pay them salary regularly.

5. Grounds for relief with legal provisions:

- i) Because the applicants were appointed as Substitute Porters and have completed more than 3 years of continuous service.
- ii) Because the applicants were illegally restrained from functioning which amounts to termination of their services without following the provisions of law.
- iii) Because neither any notice under the provisions of para 149 of Railway Establishment Code Vol. I was given nor the provisions of Section 25-F of the Industrial Disputes Act was followed before terminating the services of the applicants.
- iv) Because the applicants were not properly judged for being absorbed as Group 'D' employees. The applicant successfully replied the question and lifted the sand bag before the Screening Committee.

रामकुमार

- v) Because neither any seniority list was published before calling the incumbents for the purpose of screening nor any panel was formed and declared by the screening committee of the successful candidates for the purpose of appointment and posting.
- vi) Because all the applicants are having immaculate record of service and are fully fit to be absorbed as Group 'D' employees.
- vii) Because the applicants having being substitute porters are entitled to continue against the posts till the regular holder of post arrives to substitute them and as such their discontinuance was illegal and arbitrary.
- viii) Because the Screening Committee did not follow the fair procedure of testing the suitability of the candidates. The screening does not contain the element of comparative merit.
- ix) Because the action of the Respondent in not empanelling the applicants and issuing posting orders against Group 'D' post and in not allowing them to work as usual have deprived them of the right of life and livelihood besides violating the provisions of part III of the Constitution of India and the various provisions of Railway Establishment Code and Manual.

6. Details of the remedies exhausted:

The applicants declare that they have availed of all the remedies available to them under the relevant service rules etc.

7. Matters not previously filed or pending with any other court:

The applicants further declare that they had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or any suit is pending before any of them.

8. Reliefs sought: In view of the facts mentioned in para 4 above the applicants pray for the following reliefs:-

- a) That this Hon'ble Tribunal may kindly be pleased to direct the respondents to empanel the applicants and issue orders of appointment and posting against the regular Group 'D' Posts.

रामकुमार

(1/1)

b) That this Hon'ble Tribunal may kindly be pleased to direct the Respondents to treat the applicants in continuous service right from the month of June, 1988 with all consequential benefits and pay the entire arrears of salary within such reasonable time as this Hon'ble Tribunal may deem fit. This Hon'ble Tribunal be further pleased to quash the order dated 9.8.1990 contained in Annexure-1 to this application and ~~dx~~ direct the respondents to give the applicants all the benefits of a substitute porter on the basis of their continuance in service.

~~2X XXXXXXXX ORDER XXXXXXXX XXXXXXXX~~

c) This Hon'ble Court/Tribunal may kindly be pleased to pass any other orders which are found just and proper in the ~~ex~~ circumstances of the case.

d) to award the cost of this application.

The Grounds for reliefs are the same as have been given in para⁵ above.

9. Interim Order, if any prayed for :

Pending final decision of the application the applicants seek the following interim reliefs:

That this Hon'ble Tribunal may kindly be pleased to direct the Respondents to keep five posts of Group D employees in reserve during pendency of the case which may be filled in subject to the final decision of this Hon'ble Tribunal and further this Hon'ble Tribunal may kindly be pleased to provide that the appointments so made shall be subject to the decision of the case.

This Hon'ble Tribunal may also be pleased to direct the Respondents to take work from the applicants and pay them salary regularly during the pendency of the case and also pass such other Order which are found just and proper ~~in the~~ ~~interest of the case~~ and for the sake of ends of justice.

10. That the instant application is being filed personally.

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11. Particulars of Postal Order filed in respect of the application fee.

BO2 415970 dt 29/11/90 Amt Rs 50/-

12. List of enclosures : As per Index I and II.

VERIFICATION

I, Ram Kumar, son of Mahabir Prasad, aged about 33 years, resident of Village Hastinapur (Gayadeen Khera) P.O. Hasaganj, District Unnao, the applicant No.2 and Pairokar on behalf of rest of the Applicants, do hereby verify that that the contents of paras 1 to 4 & 6 to 12 are true to my personal knowledge and paras 5 — are believe to be true on legal advice and that I have not suppressed any material fact.

Dated : Nov. , 1990

Place : Lucknow.

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APPLICANT.

Shri

ADVOCATE.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

13

O.A. NO. _____ OF 1990.

Ganga Charan and others

....

Applicants

Versus

Union of India and others

....

Respondents.

ANNEXURE - I

NORTHERN RAILWAY

No.SS/LKO/R.L.Tiwari & Others/90.

Station Supdt's office
Lucknow: Dt. 8/8/1990

Shri R.L. Tiwari,
S/o Sh. Moti Lal Tiwari
Vill. Behta,
P.O. Dewara Kalan,
Dist. Unnao.

Registration No. 105/1988
Central Adm. Tribunal
LUCKNOW

R. L. Tiwari and Others

VERSES

Union of India

..

In the instant Case,
the Competent authority has examined the case
in compliance of directions of the Hon Tribunal/
Lucknow and it is found that there is no artificial
break in the working days of the applicants and
as such no benefit can be extended to the applicants
with regard to allow them to continue to work as
Substitute Porters.

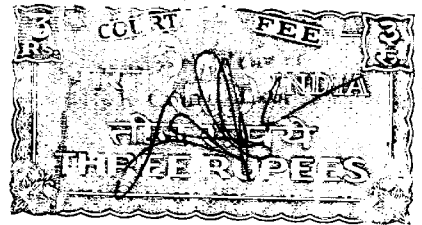
You are therefore informed accordingly.

Station Supdt.
N.Rly.Lucknow.

C/- The Law Superintendent,
Northern Railway, DRM Office Lucknow for information
in reference to your letter dated 17.5.90 & 6.6.90.

[Handwritten signature]

11/2/91



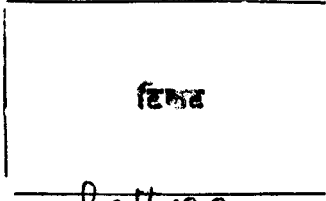
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In The Central Administrative Tribunal, Allahabad
ब अवालत नोमानु Bench, Lucknow महोदय

वादी, अपीलान्त
प्रतिवादी, रैस्पान्डेन्ट

वकालतनामा

G.A.No. - 19902



दिनांक

वादी (अपीलान्त)

Ganga Charan for his

Union of India & Co.

नं० मुकद्दमा

सन्

पेशी की ता०

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ऊपर लिखे मुकद्दमा में वादगी ओर से श्री ओ० पी० श्रीवास्तव एडवोकेट
समक्षी पी० श्रीवास्तव, एडवोकेट
द६७, पुराना महानगर निकट फातिमा अस्पताल, लखनऊ-२२६००२ महोदय

नाम अवाहक
मुकद्दमा नं०
पेशी करीब

मैं अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पेंरवी व जबाब देही व प्रश्नोंत्तर करें या कोई कागज दाखिल करें या लीटावें या हमारी ओर से डिगरी जारी करावे और रुपया असूल करें या मुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हजारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई खय्या जमा करें या हमारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई यह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पेंरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पेंरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

Accepted

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १९

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

M. P. No. 707/9014
MISC. AN. NO. OF 1990

In re:

O.A. AN. NO. OF 1990

1. Ganga Charan, son of Babu Lal, aged about 30 years, resident of Village Shahsadpur, P.O. Rupauo, District Unnao.
 2. Ram Kumar, son of Mahabir Prasad, aged about 33 years, resident of Village Hastinapur (Gayadeen Khera) P.O. Hasanganj, District Unnao.
 3. Radhey Lal, son of Bhagwan Deen, aged about 31 years, resident of V. & P. District Lucknow.
 4. Ram Kishore, son of Mahabir, aged about 31 years, resident of Village Hastinapur (Gayadeen Khera) P.O. Hasanganj, Lucknow.
 5. RamLakhan Tewari, son of Sri Moti Lal Teeari, aged about 31 years, resident of Village Behta, P.O. Dewera Kalan, District Unnao.
- Applicants

Versus

1. Union of India, through its General Manager, Northern Rly., Baroda House, New Delhi.
Divisional
 2. ~~Additional~~ Railway Manager, Northern Railway, Hazratganj, Lucknow.
 3. Station Superintendent, Northern Railway, Lucknow.
 4. Assistant Personal Officer, Northern Railway, Hazratganj, Lucknow.
- Respondent

APPLICATION FOR PERMISSION TO FILE
JOINT APPLICATION.

Filed today
26/11

26/11

The humble applicants named above most respectfully submit as under:-

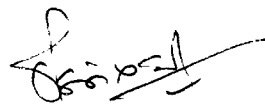
1. That the applicants are similarly situated and are aggrieved against one and the same impugned action of the Respondents.
2. That the applicants have filed the above noted application against one and the same cause of action ^{arising} ~~arising~~ out of the common facts and circumstances and they have common interest in the matter.
3. That the applicants have prayed for common relief and have got jural relationship and as such they may be allowed to file a single joint application.

P R A Y E R

WHEREFORE it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to ~~direct the~~ permit the applicants to file a single ^{all} application on behalf of the applicants for the sake of ends of justice.

For & this act of kindness the applicants shall be highly obliged.

Lucknow Dated:
November 27, 1990.


(O.P. SRIVASTAVA)
ADVOCATE
COUNSEL FOR THE APPLICANTS.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,

L U C K N O W

M.P.NO. 1039 OF 1992

OA 386/90(1)

Filed for - 17/11/92

GANGA CHARAN & OTHERS

...

APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

...

RESPONDENTS

Sir,

APPLICATION FOR ORDERS

On behalf of the applicants, it is most respectfully submitted:-

1. That the above-noted case was admitted on 28.11.1990 and notices were issued to the respondents.
2. That after admitting the application, the Hon'ble Tribunal was pleased to order that the case be listed before learned D.R.(S) for completion of the proceeding of counter reply and rejoinder reply.
3. That firstly on 9.1.1991 the case was listed before the learned D.R.(J) and since then the case has been listed before learned D.R.(J) for more than twelve times.
4. That despite of ample of opportunity, no counter reply has been filed on behalf of the respondents.

.2.

5. That the applicants are poor substitute terminated porters.

6. That it appears that the respondents do not want to file any counter reply.

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to order that the case be listed before the Hon'ble Bench of Tribunal for orders for the sake of ends of justice.

For this act of kindness, applicants shall be obliged.

LUCKNOW

DATED 17.11.1992.

(D.F. SRIVASTAVA)
Advocate,
COUNSEL FOR THE APPLICANTS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A. NO. 386 of 1990 (2)

Gsnga Charan and other Applicants

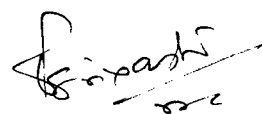
Versus

Union of India and others Respondents.

I N D E X

COMPILATION NO. II

<u>Sl. No.</u>	<u>Description of papers</u>	<u>Page No.</u>
1.	Annexure - 2 Judgment dated 23.4.1990 of the Hon'ble Tribunal.	1 - 6
2.	Annexure - 3 Copy of letter dated 6.7.1990	7 - 00
4.	Annexure - 4 Letter dated 17.8.90 designating the applicants as Substitute Porters.	8 - 10
5.	Annexure - 5 Para 2315 to 2321 of Railway Estt. Manual.	11 - 13
6.	Annexure - 6 Para showing the distinction between the Casual Labours and Substitutes.	14 - 16
7.	Annexure - 7 Letter Dt 18/6/1988	17 - 00


ADVOCATE.

राम कुमार

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A. NO. _____ OF 1990.

Ganga Charan and others

....

Applicants

Versus

Union of India and others

....

Respondents.

ANNEXURE-2

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH, LUCKNOW

Original Application 105/88(L)

Ram Lakhan Tewari & others

..Applicants

versus

Union of India & others

..Respondents

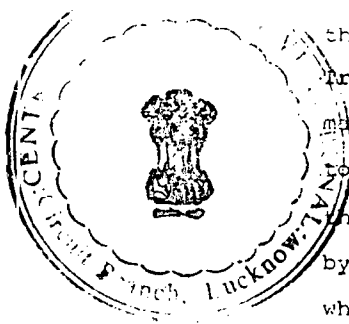
Hon. Mr. D.K. Agrawal, Judl. Member.

Hon. Mr. P.S. Nabesh Mohammed, Adm. Member.

(Hon. P.S. Nabesh Mohammed, A.M.)

Ram Lakhan Tewari and 5 others, who were working as Substitute Porters under the control of Station Superintendent, Northern Railway, Lucknow, have filed this application under section 19 of the Administrative Tribunals Act, 1985 with the prayer that the Tribunal may issue directions to the respondents to allow them to continue to work as Substitute Porters and restrain the respondents from giving effect to the orders given by the Station Superintendent, Lucknow from 25.7.88 by which they were not allowed to continue to work as Substitute Porters. There is also a prayer for regularization of their services and to treat them as being in continuous service without any break and to allow the consequential benefits of this post.

2. Their case is that they were initially appointed from various periods as Substitute Porters; first applicant from 25.12.77, second applicant from 14.4.76, fourth applicant from 20.4.75, fifth applicant from 2.9.77 and sixth from 14.4.1977, the details being as



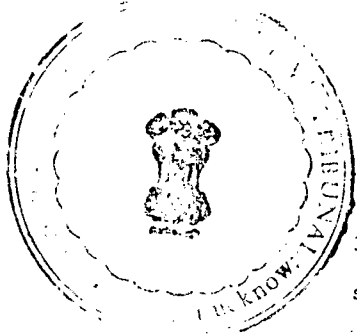
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given by the applicant in respect of applicant No. 3. They are continuously working from the years 1983-84 and had completed more than one year of continuous service within the meaning of Section 25 of the Industrial Disputes Act and their work has been found satisfactory, therefore, the restraining order by the respondents No. 3 under which they were not allowed to work, is against law. They also appeared for the screening test for regularisation of their services in May 1987. The respondents have resorted to pick and choose policy while allowing ^{persons engaged later} ~~persons~~ to continue to work as Substitute Porters. ~~Since~~ They have completed 120 days continuous work as per the provisions of Railway Establishment Manual; Industrial Disputes Act is also applicable to them in that they have completed more than one year of continuous service; the applicants have prayed for the reliefs in the application indicated earlier.



3. Reply on behalf of respondents is that their services could not be utilised because no casual vacancies were occurring and whenever such casual vacancies were occurring, they were not vigilant enough to tender themselves for duty. It is stated that the applicants are not Substitute Porters, but casual labourers under the control of Station Superintendent, Lucknow Railway, Lucknow. According to the reply, it is incorrect to say that they were restrained from doing work by the Station Superintendent from 25.7.83. There was nothing to show that they were initially appointed as Substitute Porters. It is true that they worked in casual vacancies and there have been no artificial breaks created by the administration. The details of the working of the applicant have been given by the respondents in Annexures to the reply. None of the applicants had completed 120 days of continuous service.

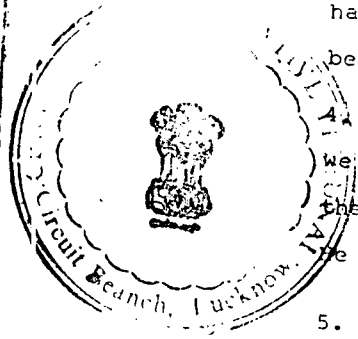
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The details are that in case of the first applicant he had worked for 47 days in the year 1984, 177 days in 1985, 42 days in 1986, 126 days in 1987 and 43 days in 1988. In case of applicant No. 2, he had worked for 100 days in 1985 and for 63 days in the year 1987. In case of applicant No. 3 he had worked for 55 days in the year 1984, for 163 days in 1985, 134 days in 1986, 100 days in 1987 and 47 days in 1988. Applicant No. 4 had worked for 168 days in the year 1986, 180 days in 1987 and 127 days in 1988. Applicant No. 5 had worked for 18 days in 1984, 61 days in 1985, 32 days in 1986, 133 days in 1987 and 34 days in the year 1988. In case of applicant No. 6 he had worked for 140 days in the year 1986, for 98 days in 1987 and for 55 days in 1988. Since they had not completed 120 days of ^{continuous} working, they will not be entitle to any temporary status or other regularisation.



4. In the absence of learned counsel for the applicant we had to peruse the records and go by the merits of the case. We heard the learned counsel for the respondents. He argued his case on the lines indicated in the reply.

5. After hearing the applicants and perusing the records, we find that applicants were casual labourers and service conditions of casual labour are explained in Chapter XXV of the Railway Establishment Manual. There is nothing to indicate that any of the applicants had worked continuously for 120 days and this is the requirement for regularisation ~~for considering regularisation~~. The rules make it clear that casual labour should not be deliberately discharged with a view to causing artificial break in their service and preventing them from attaining temporary status. Rule 2504 makes it clear what constitutes

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the break in service and Rule 2504 in Chapter XXV states as follows: (Railway Establishment Manual (Second Edition) 1968)

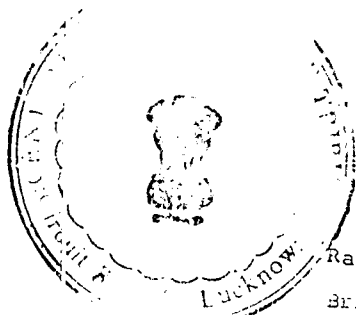
"Breaks in Service: The following cases of absence will not be considered as breaks in service for the purpose of determining six months' continuous employment referred to in para 2501 viz:

(a) The periods of absence of a Workman who is under medical treatment in connection with injuries sustained on duty covered by provisions under the Workmen's Compensation Act.

(b) Authorised absence not exceeding 15 days during the preceding six months.

Note: Unauthorised absence or stoppage of work or the intervening period when the workman on his own changes from one work to another will be treated as a break in continuity of employment.

(c) Non-performance of work on days of rest given under the Hours of Employment Regulations or under the Minimum Wages (Central) Rules, 1950 and on days on which the establishment employing the labour remains closed does not constitute a break nor will it be counted against the limit of fifteen days referred to in (b) above. The term "authorised absence" for this purpose covers permission granted by the supervisory official in charge to be away from work for the period specified."



Railway Establishment Manual (By M.L. Jand) a Bahri Brothers publication, second Edition 1986) has also a chapter on casual labour at page 764 to 775. This also makes it clear that temporary status will be given to casual labour on 120 days of continuous working:

(a) "Temporary status. Casual labour who worked for a continuous period of 120 days will be granted temporary status. Such status will also be granted to the C.L. working on projects on completion of 180 days of continuous service. The service may be either in the same work or the same type of work. In no case they should be discharged deliberately to cause an artificial break in their service. They shall also be entitled to 20 days authorised break which will not be counted while determining continuous service."

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[Signature]

- (b) The following will not be considered as break in their service:
- (i) Absence due to medical treatment for injuries sustained on duty.
 - (ii) Authorised absence with the permission of the supervisor, upto 20 days;
 - (iii) Non performance of work in days of rest;
 - (iv) Nonperformance of work when the establishment remains closed (2504 (EM))
 - (v) 3 days unauthorised absence on personal reasons of the worker may not be computed in 20 days authorised absence and to constitute a break (2504 EM) (E(NG) 11/79/CL/26 dt. 26.7.79)
 - (vi) When sent for medical examination, the absence may be reckoned upto 20 days authorised absence. If the worker has attained temporary status, this period may also be adjusted against his leave due. (E(NG) 11-79/CL/43 dt. 8.11.79 & 24.11.79)
 - (vii) Absence upto 4 weeks (in addition to 20 days) may be permitted to female employees for maternity purposes (E(NG) 1-77/CL dt. 30.4.77, No. 6770)
 - (viii) If the duration of work authorisation expires on 31st March and the work is started later on, it will not cause a break in service, if the work is given to the same casual labour.
(FC-72/CL/69/311) dt. 2.7.73)
 - (ix) On completion of work or for non availability of further Protective work when C.L. on daily wages or in regular scale of Pay of 1/30 of the minimum scale plus J.A. is discontinued and employed later when work is available, such gaps in the service will not count as breaks for the purpose of continuity of service of 120/180 days. This is applicable w.e.f. 21.10.80.
(E(NG) 11/80/CL/25 dt. 21.10.80/N. 7677, N. 169(80)

In case of Substitutes the gaps that occur between 2 engagements should be ignored for the purpose of grant of temporary status.

(E(NG) 11-62/SB/8 dt. 4.1.83)

It is clear that though the applicants have been engaged in casual vacancies, they cannot be considered substitute for special meaning in terms of Regular status. For their definition, substitutes are persons engaged in regular scale of pay in such positions.

ATC

[Signature]

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the railway servants being on leave or due to non-availability of the permanent railway servants.

6. While, therefore, it is not possible for us to come to the conclusion that any of the Applicants has worked for 120 days continuously to enable them to be considered for the conformant of temporary status or other benefits, we are clear in our mind that the Applicants had worked for long periods. Whether the breaks as indicated in Annexures to the reply are authorised breaks or not authorised breaks in terms of railway rules, will be a matter for the Respondents to consider. In the circumstances, while we are unable to give the reliefs prayed for to the Applicants, we would direct the Respondents to sympathetically consider the cases of the Applicants, the periods for which they have worked, vide details as disclosed in the Annexures to the reply by the Respondents and arrive at a conclusion as to what benefits can be given to the Applicants. This should be done within a period of two months from the date of receipt of a copy of this order.

7. The Original Application is disposed of accordingly. There will be no order as to costs.

MEMBER (A)

23.4.90
MEMBER (J)

Dated: 23rd April 1990

C.T.C.

Attested
True Copy

25/4/90
Central Administrative Tribunal
Lucknow Bench,
Lucknow

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O.A. NO. _____ OF 1990.

(7)

Ganga Charan and others

Applicants

Versus

Union of India and others

Respondents.

NORTHERN RAILWAY

No. SS/LKO/RL Tiwari &
others/90

Station Supdt.'s office
N.Rly, Charbagh, Lucknow.

Dated 6/7/1990

Sh. R.L. Tiwari,
S/o Sh. Moti Lal Tiwari
Vill.- Bohta
Post-Office- Dewara Kalan
Distt- Unnao.

Registration No. 105/1988
Central Adm. Tribunal
Lucknow.

R.L. Tiwari and others

Verses

Union of India

--- --

In compliance of directions of the honourable Tribunal made in its judgement dated 23.4.90, the case is being examined by the competent authority, considering actual position of your working period and decision taken in matter will be communicated to you very shortly.

This is for your information.

Copy to:

Station Supdt.
Lucknow.

Law Supdt. (Legal Cell) DRM Office, Lucknow for information in reference to his letter dated 6.6.90.

RM/SH/12

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O.A. NO. _____ OF 1990.

Ganga Charan and others

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Applicants

Versus

Union of India and others

....

Respondents.

ANNEXURE-4

उत्तर रेलवे

1262

पत्र सं० 2203/5-9/स्त्रीनि/90

मण्डल कार्यालय

लखनऊ, दिनांक 15-8-90

नाम :- राधा लाल

पिता का नाम :- रामलाल दीन

पद :- स्टेन/पीई

द्वारा स्टेशन मास्टर/स्टेशन अधी. लखनऊ

विषय :- यातायात एवं वाणिज्य शाखा के ग्रुप 'डी' कर्मचारियों के स्त्रीनिग हेतु बुलावा पत्र ।

आपको सूचित किया जाता है कि आप दिनांक 05-8-90 से 07-8-90 तक मण्डल कार्यालय में निम्नलिखित प्रपत्रों के साथ स्त्रीनिग कमेटी के समक्ष कमेटी रूम में स्त्रीनिग हेतु ठीक 10 बजे उपस्थित हों ।

1. शक्ति योग्यता प्रमाण-पत्र, मूल प्रति स्वस फोटो प्रति
2. जन्म तिथि प्रमाण-पत्र
3. यदि अनु.जाति/अनु.जन.जाति के हों तो तहसीलदार या एन.डी., एम. द्वारा जारी जाति प्रमाण-पत्र की मूल प्रति स्वस फोटो प्रतिलिपि साथ अवश्य लायें ।
4. दो चरित्र प्रमाण-पत्र जो कि छः माह के अन्दर भिन्न-भिन्न एम0स्ल0र0/एम0पी0 या राजपत्रित अधिकारी द्वारा जारी किया गया हो ।
5. रैजुल लेटर कार्ड की फोटो प्रति स्वस मूल प्रति
6. पाँच सत्यापित पास पोर्ट साईज का फोटो ग्राफ

नोट :- स्टेशन अधिकार/लखनऊ के अधीन कार्यरत सभी बुलाये गये स्वजी कर्मचारियों को सूचित किया जाता है कि वे अपने साथ उपरोक्त प्रपत्र के अनिवार्य रूप से प्रकार के उपलब्ध प्रपत्र साथ लायें जिससे कि उनके प्रथम नियुक्ति तिथि स्वस कार्य दिवस की पुष्टि करने में वैध स्वस सक्षम हों ।

सहायक कार्मिक अधिकारी

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रामकुमार

उत्तर रेलवे

पत्र सं 220ई/5-2/स्त्रीनिग/90

मण्डल कार्यालय
लखनऊ, दिनांक 12-8-90

नाम : राम कुमार

पिता का नाम : महेश्वरी

पद : एक्जिक्यूटिव

द्वारा स्टेशन मास्टर/स्टेशन अधी. Uko

विषय :- यातायात एवं वाणिज्य शाखा के ग्रुप 'डी' कर्मचारियों के स्त्रीनिग हेतु बुलावा पत्र ।

आपको सूचित किया जाता है कि आप दिनांक 05-8-90 से 02-9-90 तक मण्डल कार्यालय में निम्नलिखित प्रपत्रों के साथ स्त्रीनिग कमेटी के समक्ष कमेटी रूप में स्त्रीनिग हेतु ठीक 10 बजे उपस्थित हों ।

- 1- शैक्षिक योग्यता प्रमाण-पत्र, मूल प्रति स्वस फोटो प्रति
- 2- जन्मतिथि प्रमाण-पत्र
- 3- यदि अनु.जाति/अनु.जन.जाति के हों तो तहसीलदार या एस.डी, एस. द्वारा जारी जाति प्रमाण-पत्र की मूल प्रति स्वस फोटो प्र. लिपि साथ अवश्य लायें ।
- 4- दो चरित्र प्रमाण-पत्र जो कि छः माह के अन्दर भिन्न-भिन्न एसओएसओ/एसओपीओ या राजपत्रित अधिकारी द्वारा जारी किया गया हो ।
- 5- ड्राइवर कार्ड की फोटो प्रति स्वस मूल प्रति
- 6- पाँच सत्यापित पास पोर्ट साईज का फोटो ग्राफ

नोट :- स्टेशन अधीक्षक/लखनऊ के अधीन कार्यरत सभी बुलाये गये एक्जिक्यूटिव कर्मचारियों को सूचित किया जाता है कि वे अपने साथ उपरोक्त प्रपत्र के अतिरिक्त सभी प्रकार के उपलब्ध प्रपत्र साथ लायें जिससे कि उनके प्रथम नियुक्ति तिथि स्वस कार्य दिवस की पुष्टी करने में वैध स्वस सक्षम हों ।

राम कुमार

सहायक कार्मिक अधिकारी
उ०रे० / लखनऊ

17/8/90

12/10

उत्तर रेलवे

फ. नं० 220/5-9/लखनऊ/90

नमून नं०

तारीख, दिनांक 12-8-90

नाम : श्री. वि. क. शर्मापिता का नाम : श्री. वि. क. शर्मापद : स्टेशन मास्टर/स्टेशन अधी.द्वारा स्टेशन मास्टर/स्टेशन अधी. LK

विषय:- यातायात एवं वाणिज्य शाखा के ग्रुप 'डी' कर्मचारियों के ट्रेडिनिंग हेतु बुलावा पत्र।

आपको सूचित किया जाता है कि आप दिनांक 05-8-90 से 02-8-90 तक नडल कार्यालय में निम्नलिखित प्रपत्रों के साथ ट्रेडिनिंग कमेटी के तत्वा कमेटी सम में ट्रेडिनिंग हेतु ठीक 10 बजे उपस्थित हो।

- 1- शैक्षिक योग्यता प्रमाण-पत्र, मूल प्रति स्वस फोटो प्रति
- 2- जन्मतिथि प्रमाण-पत्र
- 3- यदि अनु.जाति/अनु.जन.जाति के हो तो तहसीलदार या एस.डी.ओ. द्वारा जारी जाति प्रमाण-पत्र की मूल प्रति स्वस फोटो प्रतिलिपि साथ अवश्य लायें।
- 4- दो चरित्र प्रमाण-पत्र जो कि छः माह के अन्दर भिन्न-भिन्न एस.डी.ओ.एस.ओ/एस.डी.ओ या राजपत्रित अधिकारी द्वारा जारी किया गया हो।
- 5- कैजुअल लेबर कार्ड की फोटो प्रति स्वस मूल प्रति
- 6- पाँच सत्यापित पास पोर्ट साईज का फोटो ग्राफ

नोट:- स्टेशन अधीक्षक/लखनऊ के अधीन कार्यरत सभी बुलाये गये स्वजी कर्मचारियों को सूचित किया जाता है कि वे अपने साथ उपरोक्त प्रपत्र के अतिरिक्त सभी प्रकार के उपलब्ध प्रपत्र साथ लायें जिससे कि उनके प्रथम नियुक्ति तिथि स्वस कार्य दिवस की पुष्टी करने में वैध स्वस सक्षम हो।

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सहायक कार्मिक अधिकारी
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ANNEXURE - 5

2312. Allotment of residences and recovery of rent.—Subject to the availability of accommodation, a temporary railway servant is eligible for allotment of the same and to pay rent therefor in the same way as a permanent railway servant would.

2313. Passes.—A temporary railway servant is entitled to the same scale of passes as are admissible to a permanent railway servant of the corresponding status.

2314. Advances.—Subject to the conditions laid down in Chapter XVI a temporary railway servant may be granted advances for the purposes mentioned in that Chapter.

(ii) Substitutes

2315. Definition.—“Substitutes” are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts may fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant.

2316. Circumstances under which substitutes can be recruited.—

- (i) Ordinarily there should be no occasion to engage “substitutes” having regard to the fact that practically in all categories of railway servants leave reserve has been provided for. However, when owing to an abnormally high rate of absentees the leave reserve may become inadequate or ineffective as in the case of heavy sickness, or where the leave reserve is available but it is not possible to provide the same, say at a wayside station, and it may become absolutely necessary to engage substitutes even in vacancies of short duration.
- (ii) As far as possible Substitutes should be drawn from a panel of suitable candidates selected from Class III and IV posts and should be engaged subject to the observations made in (i) above, only in the following circumstances : --
 - (a) Against regular vacancies of unskilled and other categories of class IV staff requiring replacement for

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which arrangements cannot be made within the existing leave reserve.

- (b) Against a chain vacancy in the lower category of class IV staff arising out of the incumbent in a higher class IV category being on leave, where it is not possible to fill the post from within the existing leave reserve.
- (c) Against posts in categories for which no leave reserve has been provided.
- (d) Against vacancies in other circumstances specified by the Railway Board from time to time.

2317. Emoluments payable to the Substitutes:—Substitutes should be paid regular scales of pay and allowances admissible to such posts, irrespective of the nature or duration of the vacancy.

2318. Rights and privileges admissible to the Substitutes:—Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of six months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.

NOTE:—The conferment of temporary status on the Substitutes on completion of six months continuous service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position in select lists and/or they are selected in the approved manner for appointment to regular railway posts.

2319. Breaks in service:—The following cases of absence will not be considered as breaks in service for the purpose of determining six months' continuous employment referred to in para 2318 above:—

- (a) The periods of absence of a Substitute who is under medical treatment in connection with injuries sustained on duty covered by the provisions under the Workmen's Compensation Act.

- (b) Authorised absence not exceeding 15 days during the preceding six months.

NOTE.— Unauthorised absence or stoppage of work will be treated as a break in continuity of employment.

- (c) Days of rest given under the Hours of Employment Regulations or under the Statutory Enactments and the days on which the Establishment employing the substitutes remains closed will not be counted against the limit of 15 days authorised absence referred to above. The term "authorised absence" for this purpose covers permission granted by the Supervisory official in charge to be away from the work for the period specified.
- (d) Periods involved in journey etc., for joining the post on transfer from one station to another station or within the same station itself, in the exigencies of service but not exceeding in any case normal period of joining time permissible under the rules.
- (e) A register should be maintained for recording the names of all "Substitutes" wherever employed according to the unit of recruitment e. g. Division, Workshops, P.W.Is. lengths etc. strictly in the order of their taking up Substitute employment at the time of their initial engagement.

SECTION B

TEMPORARY ASSISTANT OFFICERS

2320. **Definition:**—A temporary assistant officer means an officer who is neither class I nor class II, recruited through the Union Public Service Commission (other than retired/released defence service officers and officers who were already in railway service at the time of their appointment as temporary gazetted officers).

2321. **Termination of service and period of notice:**—Service of a temporary assistant officer shall be liable to termination on 3 months' notice on either side during the period of temporary employment. The Government shall, however, also have the right to pay 3 months' pay in lieu of three months notice.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A. NO. _____ OF 1990.

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Respondents.

ANNEXURE-6

Casual Labour and Substitutes

Sometimes these two types of labour are misunderstood and one is taken for the other in their service rights. We place below in a chart form, different aspects as applicable to each.

Substitutes

Definition. They are persons engaged in regular scales of pay and allowances applicable to posts against which they are employed. These posts may fall vacant due to rly. servants being on leave or due to non availability of permanent or temporary rly. servants and which cannot be kept vacant.

(2315 EM)

Class. They may be in class III or class IV

Payment. They being on regular scale, are paid on monthly basis. They draw pay against the regular sanction irrespective of the duration of vacancy.

(2315 EM)

Vacancy. Vacancy position must be checked before they can be appointed. If there is no vacancy, no substitute can be engaged.

Increment etc. They shall be entitled to yearly increment and shall subscribe to P.F.

Leave Reserve. Where leave Reserve is available no substitute should be engaged unless the absence exceeds the number of 'L Rs or the L.R. is not readily available, vacancy being at a way side station.

2316 (i) EM)

Casual labour

It refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest source. It is not liable to transfer and the conditions applicable to permanent and temporary staff do not apply to them.

(2501 EM)

They are normally in class IV.

They are paid on daily basis. They draw wages from contingencies till they get temporary status or are employed on Projects.

No cadre position check may be necessary in this as they are engaged against sporadic requirements.

They will not get any increment etc. till they get temporary status.

No such restriction in this.

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CASUAL LABOUR AND SUBSTITUTES

(15)

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Panel. As far as possible they should be drawn from a Panel of suitable candidates selected for Class III & IV posts (2316 (ii) EM) Persons not on approved panels may not be engaged for more than 3 months.

(E(NG) ii 69/RE/1/90 dt. 16-3-70)

Temporary Status. They should be given Temporary Status after working for 4 months, except for School Teachers who will be given temporary status after 3 months. (2318 EM) Gap between two engagements may be ignored for the purpose of giving temporary status,

(E(NG) 11-82/SB-8-dt. 6-1-83)

M.W. Act. They are not governed by Minimum Wages Act.

Rly servants. They are rly. servants for all purposes.

Duration. They should normally not be engaged for more than 3 months at a stretch.

Literacy. Normally literacy is one of the qualification for their engagement.

Service Card. No Service Card is given to them.

Notice of discharge. No such notice is required except as given under code rules. However Retrenchment Compensation under I.D. Act will be paid.

Register. A register showing the names of all substitutes employed unit wise as per the order of taking up their substitute employment must be maintained. (2319, EM)

Medical exam. They will be entitled to relaxed standard of Medical examination on empanelment to the regular service. (E(NG) ii/71 CL/84 dt. 1-8-73)

Recruiting Authority. They will be appointed only by the Competent authority.

There may not be any panel, but those discharged earlier must be given preference as per their seniority while re-engaging.

They will also be given Temporary status after working for 4 months. Authorised absence and discontinuance of work for want of productive work will not constitute a break.

Those of them engaged on the Scheduled Trades are governed by M.W. Act.

They are rly. servants under the Railways Act and not for Code Rules. So not entitled to Passes/P.T.O. They should not be discharged merely with a view to cause an artificial break in their service.

Except in categories where literacy is a prescribed qualification, no literacy should be insisted upon.

They must be given a Service Card.

Notice of 15 days, is required to discharge CPC holders. Also they will be entitled to benefits under I.D. Act.

Similar register must be maintained in their case too.

This is applicable to casual labour too.

Normally Senior Subordinates recruit them.

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Pensionary benefits. Service as substitute rendered after completion of 4 months and followed by regular absorption will be counted for Pension.
(F(E) iii 69/PN 1/21 dt. 22-7-70)
ER 193/80

Not applicable

Medical Treatment. They are entitled to Medical Treatment for self only in the out patient department.
(E(NG) ii-77/CL-2 dt. 16-5-79)

They are also entitled to the similar treatment now. When injured on duty, they will also be entitled to Indoor treatment and $\frac{1}{2}$ monthly payment.
(E(NG) ii-77/CL-2 dt. 3-5-78)

Daily Allowance. They will be entitled to it as per Rules.

They should normally not be sent out of their Hd. Qrs. If sent out, they will be entitled to DA under normal rules at the rates prescribed for them. (Please see chapter on TA/DA)

Break Down Duties. Substitutes allotted to B.D. gangs will be paid BDA and other benefits as admissible.

Casual labour engaged in B.D. duties will be given free food, TA/DA., higher rate of wages as applicable.
(E(NG) ii-69 CL/1 dt. 1-3-71, NR 5324)

Other Provisions. Casual Labour (C.L. In short) may be employed in the following cases—(i) *Staff paid from contingencies.* Such of the persons who continue to do the same work for which they were engaged, on other work of the same type for more than 4 months without a break will be treated as temporary after the expiry of such period.

(ii) Labour on Projects, except those transferred from the temporary or permanent employments.

(iii) Seasonal labour who are sanctioned for specific works of less than 4 months duration.

Note—Once a person attains a temporary status, he retains that status so long he is in continuous employment on the railways.

The term same type of work should not be too rigidly interpreted so as to cause undue suffering to C.L. by way of break in service because of a slight change in the type of work in the same unit.
(2501 EM)

(iv) Following record must be maintained for daily rated & Temporary C.Ls. :—

(a) Retirement Register (b) Left Hand Thumb Register (c) Service cards.

Unit of recruitment.—(i) Senior Subordinates like I.O.W., PWI. Station etc. will be the unit of recruitment of C.L., So also for purpose of discharge Master the Seniority in the respective unit of IOW/PWI/SOM etc. will be followed :

(ii) In Projects the Recruitment unit will be jurisdiction Engineer, so for discharge also the seniority list of Executive Engineer will be followed.

Handwritten signature or initials at the bottom of the page.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

(17)

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ANNEXURE-7

True copy of order Sr. H.P. Duley from
Dated 15.6.88

Spt (9) All casual labourers working at the station, are not permitted to perform duty further wise copies of Sr. H.P. Duley's order has given this message personally today. Hence, casual labourers are not required to work without the written permission / phone message of Sr. H.P. Duley or TI/AD. Work has to be managed by Leverman Porter & gateman on duty, accordingly.

Sr. H.P. Duley
27/7

27/7

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A.No.386 OF 1990(L)

Sri Ganga Charan and othersApplicants
Versus	
Union of India and othersRespondents

COUNTER REPLY ON BEHALF OF RESPONDENTS

1. I, *K.M. Narain* presently posted as
AssH Personnel Officer in the Office of
the Divisional Railway Manager, Northern Railway,
Lucknow, hereby solemnly state as under:-

1. That the undersigned is presently posted as
AssH Personnel Officer in the Office of
the Divisional Railway Manager, Northern Railway,
Lucknow and is duly authorised and competent to file
this reply on behalf of the respondents. The
undersigned has read and understood the contents of
the above mentioned application moved by the
applicant under Section 19 of the Administrative
Tribunal Act, 1985 (hereinafter referred as
'application') and is well conversant with the facts
stated hereunder.

2. That the contents of paragraph 1, 2 and 3 of
the application need no comments from the answering
respondents.

3. That the contents of paragraph 4.1 of the
application are denied. In reply thereto, it is most
respectfully submitted that all the applicants were
initially engaged as 'Casual Labours' against day to
day casualties, and after having completed requisite
number of days' continuous working, they were

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screened by a duly constituted Screening Committee on 7.09.1990, and the Screening Committee did not find them suitable. Accordingly, they did not qualify in the screening, and were not placed on the panel of successful candidates. Thus, the allegations made in the paragraph under reply, being false and baseless, are denied.

4. That the contents of paragraph 4.2, as stated, are not admitted. It is most respectfully submitted that the applicants, who were 'Casual Labours', whose services were utilized against day to day casualties of the permanent and temporary railway staff working as 'Porters'. It is further clarified that to meet out the casualties, the Railway Administration has appointed 'Leave Reserve Porters', who are railway servants. These 'Leave Reserve Porters', being railway servants, are utilized against the casualties of Porters. In case, the casualties exceed to that of the total of Leave Reserve Porters, only then the services of 'Casual Labours' are utilized in order of their seniority to avoid any dislocation of work. It is further submitted that the applicant Sri Ram Kishore was initially engaged on 14.07.1977, instead of 14.04.1977. The averments made by the applicants to the effect that they were 'appointed' by the Railway Administration, are specifically denied. Instead, the applicants were 'engaged' by the Railway Administration as 'Casual Labours'.

5. That the contents of paragraph 4.3 of the application, being false and baseless, are denied. It is specifically denied that the applicants have worked continuously with the alleged 'artificial breaks' with the sole purpose of depriving them of their due. In fact, the applicants have worked in broken periods against 'day to day casualties'.

6. That the contents of paragraph 4.4, as stated, are denied. In reply thereto, it is most respectfully submitted that the Casual Labour/Substitutes are not

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railway servants as defined under Rule 43 of the Railway Establishment Code, Volume-I, which reads as under:-

"Railway servant means a person who is a member of a service, or holds a post under the administrative control of the Railway Board. It also includes a person who is holding the post of Chairman, Financial Commissioner, or a member of the Railway Board. Persons lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control, do not come within the scope of their definition. The term **excludes** Casual Labour."

In view of the above quoted Rule 43, the applicants have no legal right to claim appointment or absorption in railway service as a railway servant unless and untill they have been found suitable by a Screening Committee.

7. That the contents of paragraph 4.5 of the application, being wrong and baseless, are denied in entirety. It is specifically denied that the applicants have 'practically' or otherwise acquired the status of railway servants, and/or have acquired the status of a temporary railway servant at any point of time. This fact is evident from the judgment and order of this Hon'ble Tribunal dated 23.04.1990 passed in O.A.No.105/88(L): Ram Laxhan Tewari and others versus Union of India and others. As such, the principle of 'res-judicata' will apply in the present case.

8. That in reply to the contents of paragraph 4.6 of the application it is most respectfully submitted that the applicants were not provided any work as there was no work available for them, though their names and seniority as Casual Labours remained intact for the purposes of their regularisation subject to their suitability which was to be adjudged during the course of Screening by a duly constituted Screening Committee. It is further submitted that the

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applicants were called for screening, and they appeared before the Screening Committee. The Screening Committee declared the panel of successful candidates, which was notified by the letter No.220-E/5-9/Rectt/Screening/Cl-IV(T&C)90 dated 6.11.1990. The applicants, who did not succeed in the screening test, were not placed on the panel, while the successful candidates' names were brought on the panel.

9. That the contents of paragraphs 4.7 to 4.11 of the application, being matter of record, need no comments. However, it is most respectfully submitted that this Hon'ble Tribunal, after considering all the material on the record of O.A.No.105/88(L), and after considering each and every aspect, decided the said application vide its judgment dated 23.04.1990. In compliance of the said judgment and orders of this Hon'ble Tribunal, the respondents have sympathetically considered the case of the applicants which is evident from the Annexure No.3 to the present application. In compliance of the judgment and orders of this Hon'ble Tribunal dated 23.04.1990, the applicants were called for the screening test, as evident from Annexure No.4 to this application, but the applicants were declared unsuccessful in the screening test by the Screening Committee. Thus, the respondents have fully complied by the orders of this Hon'ble Tribunal dated 23.04.1990 passed in O.A. No.105/88(L): Sri Ram Lakhan Tewari and others versus Union of India and others. Therefore, on the same facts and grounds the present application is not maintainable, being barred by the principles of 'res judicata', and is liable to be dismissed on this very ground.

10. That in reply to the contents of paragraphs 4.12 to 4.14 of the application, it is most respectfully submitted that as a metter of fact, the rules contained in the Chapter XXV of the Indian Railway Establishment Manual relate to the Casual Labour/Substitute Porter. It is the admitted case of

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the applicants that as provided under the railway rules given in Chapter XXV of the Indian Railway Establishment Manual, they were called for screening test for regularisation, and they did appear in the said screening. The allegations of the applicants to the effect that the Screening Committee asked nothing but the names and their parentage, is far from truth, and therefore, specifically denied. The applicants were screened in accordance with the rules and regulations on the subject alongwith other eligible candidates, and were unsuccessful in the screening test. Therefore, their names were not brought on the panel of successful candidates. Anything contrary to what has been said in this paragraph is denied.

11. That the contents of paragraph 4.15 of the application are denied. It is most respectfully submitted that the Screening Committee, screened the applicants alongwith other similarly situated eligible persons, and declared them unsuccessful. Therefore, the respondents have no right vested in them to override the decision of the Screening Committee. It is further submitted that except Sri Munna Lal s/o Sri Ram Saran, Sarva Sri Raja Ram s/o Chedi Lal, Siya Ram s/o Sri Kishan, Ram Singh s/o Barsati, Gopi Yadav s/o B.L.Yadav, Shiv Ram s/o Raghunath have been successful in the screening test, and accordingly, they have been posted against existing vacancies in the Division.

12. That the contents of paragraphs 4.16 to 4.18 of the application, as stated, are denied. It is most respectfully submitted that the applicants were screened in accordance with rules by a duly constituted Screening Committee, and the panel of successful candidates was declared on 6.11.1990. Hence, the contents of aforesaid paragraphs, being wrong and baseless, are denied. It is further submitted that as a matter of fact, Casual Labour/ Substitutes have been engaged against the casualties of permanent and temporary railway staff, but this

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does not give them any legal right to become a railway servant **without facing** Screening Committee as provided under the railway rules. It is respectfully submitted that the issues raised by the applicants in the present application have already been considered and decided by this Hon'ble Tribunal in O.A.No.105/88 (L): Sri Ram Lakhan Tewari and others versus Union of India and others, vide judgment and order dated 23.04.1990. This judgment is binding on both the parties and can not be legally reagitated afresh before the same forum.

It is further submitted that the 'Substitutes' are defined in Rule 2315 of the Indian Railway Establishment Manual, but the process of their regularisation is the same as that of 'Casual Labour' which has been given in Chapter XXV of the IREM, which means that both the 'Substitutes' and 'Casual Labours' have to face Screening Committee and have to qualify in the screening test for their regularisation and absorption in railway services. The citation of the Railway Establishment Manual by Jand in paragraph 4.18 is not authentic.

13. That the contents of paragraphs 4.19 to 4.21 of the application, being wrong and baseless, are denied. In reply thereto, the facts stated in the foregoing paragraph are reiterated.

14. That the contents of paragraphs 4.22 to 4.24 of the application, being totally false, incorrect and baseless, are specifically and strongly denied. It is specifically denied that any, or all of the respondents have 'eschewed the process of fair screening' and have shown favour to any of the candidates having any 'link' (whatever the term means). It is further denied that since the applicants, being peniless or poor, and failed to adopt any such 'tactics', were left out. It is further submitted that the Railway Establishment Manual by M.L.Jand is not authentic, and can not take place of the actual rules on the subject. It is denied

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that no panel was drawn by the respondents before issuing letters of appointment and posting. Likewise, the contents of paragraph 4.24 of the application, being totally false and baseless, are denied. It is most respectfully submitted as the applicants have failed in the screening test conducted by a duly constituted Screening Committee, the question of giving one month's notice, or salary in lieu thereof, or the applicability of Section 25-F of the Industrial Disputes Act, 1947 does not arise.

15. That the contents of paragraph 4.25 of the application are denied. It is specifically denied that the answering respondents are 'clandestinely' filling up the post of regular Group 'D' employees. It is further submitted that the respondents have fully complied with the judgment and orders of this Hon'ble Tribunal dated 23.04.1990 passed in O.A.No.105/88(L): Sri Ram Lakhan Tewari and others versus Union of India and others. There is no justification for keeping posts reserved for the applicants, as they have failed in the screening test.

16. That in view of the submissions made in the foregoing paragraphs of this reply, the undersigned is advised to state that none of the grounds mentioned in paragraph 5 of the application is tenable in the eye of law.

17. That the contents of paragraph 6 of the application need no comment.


18. That the contents of paragraph 7 of the application, as stated, are denied. It is most respectfully submitted that the applicants had earlier filed O.A.No.105/88(L): Sri Ram Lakhan Tewari and others versus Union of India and others before this Hon'ble Tribunal, and the same has been decided on 23.04.1990.

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19. That in view of the submissions already made in this reply, the undersigned is advised to state that the applicants are not entitled for any of the reliefs/interim relief as sought by them in paragraphs 8 and 9 of the application.

20. That the contents of paragraphs 10, 11 and 12 of the application need no comment.

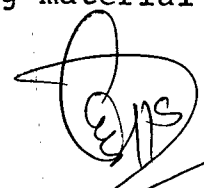
Lucknow, Dated:
April 12, 1993.


12/4/93

VERIFICATION

I, K. M. Narain, presently posted as
Asstt Personnel Officer in the Office of
the Divisional Railway Manager, Northern Railway,
Lucknow, hereby verify that the contents of paragraph
1 of this reply are true to my personal knowledge and
those of paragraphs 2 to 15, 17 and 18 are based on
record and the same are believed to be true. The
contents of paragraphs 16 and 19 are based on legal
advice and the same are believed to be true. That no
part of this reply is false and nothing material has
been concealed.

Lucknow, Dated:
April 12, 1993.


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In the Hon'ble Central Administrative Tribunal,
Lucknow Bench, Lucknow

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O.A. No. 386 of 1990 (L)

Ganga Charan & others ----- Applicants

Versus

Union of India & others ----- Respondants

Rejoinder Reply to the Counter

Reply of the Respondents

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1. That contents of para 1 of the counter reply need no comments except that the name and designation of the officer filing counter reply on behalf of the Respondants has not been disclosed in the copy of the counter reply supplied to the applicants.

2. That contents of para 2 of the counter reply need no comments.

3. That contents of para 3 of the counter reply are denied, reiterating the contents of para 4.1 of the Original Application. It is further submitted that the applicants were initially appointed as Substitute Porters and they are fully eligible and suitable to be absorbed as regular

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porters but they have been excluded maliciously from the panel arbitrarily for the purpose to make regular appointment. It is submitted that petitioners were never engaged to meet day; today casualties as alleged. The applicants have been engaged against the regular nature of work after being found fully eligible and suitable to shoulder the responsibilities of the post which they are performing with full devotion and dedication to the entire satisfaction of their superiors. The Respondants have adopted pick and choose policy while making postings on regular basis.

4. That contents of para 4 of the counter reply are denied and reiterating the contents of para 4.2 of the original application. The answering opposite parties/Respondants have not supported the contents of para under reply which are too far from truth.

5. That contents of para 5 of the counter reply are denied and in reply thereto the contents of para 4.3 of the original application are reiterated. The Respondants have been practicing to create artificial breaks of depriving the applicants and others to claim the benefit of absorption and posting against the regular post. As a matter of fact the applicants have completed their services much more to the required service continuously without any break except the interruptions which have been artificially created by the Respondants. But the applicants can not be

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deprived of the benefits of appointment on the regular basis on the premises of these interruptions.

6. That contents of para 6 of the counter reply are denied, reiterating the contents of para 4.4. of the original application. The applicants are Railway servants who have been appointed against the regular post as substitute porters and have been given/paid full salary in the pay scale attached to the post along with the all admissible allowances from time to time and other conditions of service like medical facilities pass facility and P.TOs. Thus, applicants held the post under the administrative control of the Railway Board as well as their local satraps. It is denied that applicants have not been found suitable by the so called Screening Committee for the purpose of absorption in the Railway service. The applicants have wrongly been excluded and not empanelled without any rhyme and reason. The Respondants have only empanelled of their own men of the candidates in whom they were interested but the candidates like the applicants who have no approaches and/or also too poor to please anyone have been left to be empanelled.

7. That contents of para 7 of the counter reply are denied, reiterating the contents of para 4.5 of the original application. The applicants have acquired the status of temporary Railway servants after completing the 120 days continuous service and they are being governed like Railway servants defined in para 102(13) of Indian Railway Establishment Code volume (I). In original application no. 105 of 1988 (L) no decision has been given on this point and only an exparte orders

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have been passed on the basis of some averments which does not constitute resjudicata.

8. That contents of para 8 of the counter reply are denied and in reply thereto the contents of para 4.6 ~~and~~ of the original application are reiterated. Though the work is available in abundance yet the Respondants adopted pick and choose policy, provides work to their sweep will without adhering to any fair principle or seniority. All the applicants were not duly considered by properly constituted Screening committee otherwise the persons/candidates who have empanelled on the recommendations of so called screening committee are virtually inferior in all respects of the applicants. There is absolutely no merit in empanelling some candidates leaving others. The applicants are well versed with the functioning and requirements of the post and who are fully eligible and qualified ~~than~~ have been left to be empanelled in the garb of decision of the screening committee, which is only arbitrary and illegal.

9. That contents of para 9 of the counter reply need no comments to the extent that they are in consonance with the contents of para 4.7 ^{to 4.11} of the original application. Contrary averments are emphatically denied. It is further submitted that the applicants have never been duly considered for the purpose of absorption. There is absolutely no reason for leaving the applicants from being empanelled. The candidates who have been

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empannelled are not keeping better records than the applicants in any manner whatsoever and in fact they are inferior in all respects to the applicants. The Respondants may be directed to produce the records of the screening committee indicating reasons for not empanelling the applicants.

10. That contents of para 10 of the counter reply are denied ~~and~~ to the extent as they are contrary to the contents of para 4.12, 4.14 of the original application which are reiterated. It is further reiterated that all the applicants have not been properly considered and have been wrongly and malicessly left to be empanelled for being posted on regular basis. There is absolutely no valid reason for not absorbing the applicants while the candidates having inferior service records as lessor experience of service lessor qualification in comparison to the applicants have been empanelled.

11. That contents of para 11 of the counter reply are emphatically denied ~~and~~ reiterated contents of para 4.15 of the original application. The criteria of empanelment is seniority list and as such the Respondants can not ignore the seniority unless and until there is something grave in the matter no candidate falling in the order of seniority can be left to be empanelled. The petitioners have been wrongly been left to be empanelled while juniors to them have been included in the panel prepared by the Respondants.

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12. That contents of para 12 of the counter reply are denied and in reply thereto the contents of para 4.16 ~~of the~~ to para 4.18 of the original application are reiterated. It has been fairly considered in para under reply that substitutes have been engaged while permanent or temporary staff ^{accrued} and as such the legal rights ~~created~~ in favour of the applicants by virtue of the long continuation. The Respondants have not disclosed the basis or the criteria which has been adopted while preparing the panel for the purpose of making posting on regular post. The applicants crave leave to state that no criteria was in fact adopted or formulated by the screening committee or any other committee for the purpose of empanelling the candidates. The averments of the Respondants to the effect that the applicants were not found suitable to be included in the panel is not founded on any material and is mere rigmorole.

13. That it is further submitted that applicants have not been fairly considered, otherwise the candidates/applicants who are having a vast experience of the work could not have been left to be included in the panel and there is absolutely no reason for not posting the applicants on the regular post.

14. That contents of para 13 of the counter reply are denied, reiterating the contents of para 4.19 to 4.21 of the original application.

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15. That contents of para 14 of the counter reply are denied and in reply thereto the contents of para 4.22 to 4.24 of the original application are reiterated. It will be pleasure of this Hon'ble Tribunal to direct the respondents to produce the records, pertaining to screening committee, ascertaining to the truth and to lift ban. The applicants have never faced in any screening committee as alleged, rather they have not been included in the panel allegedly prepared by the so called the screening committee.

16. That contents of para 15 of the counter reply are denied, reiterating the contents of para 4.25 of the original application. It is further submitted that the Respondants have shown the pretence of the complying with the orders of this Hon'ble Tribunal without actually considering the applicants in a fair manner. There is no criteria on which the applicants could be left to be included/empanelled and the Respondants have not included the applicants merely in colourable exercise of powers conducive to arbitrariness. It may be pleasure of this Hon'ble Tribunal to direct the Respondants to produce the records of the screening committee indicating the reasons for not including the applicants in the list/said panel vis-a-vis others who have been empanelled.

17. That contents of para 16 of the counter affidavit are denied and in reply thereto the contents of para 5 of the original application are reiterate. The grounds urged by the applicants are sole tenable in the eyes of law and the original application deserves to be allowed

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with cost to the applicants. The Respondants may further be directed to keep arrangements for posting the applicants on regular basis to secure the ends of justice.

18. That contents of para 17 of the counter reply need no comments.

19. That in reply to the contents of para 18 of the counter reply it is submitted that in original application no. 105 of 1988 (L.) it was directed to the Respondants to consider the cases of the applicants fairly but the same has not been done and in most unfair and arbitrary powers have been exercised to the detriment of the interest of the applicants.

20. That contents of para 19 of the counter reply are denied, reiterating the contents of para 8 and 9 of the original application. The relief sought by the applicants are well founded and the original application deserves to be allowed with cost.

21. That contents of para 20 of the counter reply need no comments.

राज्यपाल

Lucknow:

Applicants.

Dated: August , 1994.

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Verification

I, Radhey Lal aged 35 years,
son of Shri Bhagwan Deen
resident of village & Post Mounda, Lucknow.
who is himself the applicant no.1 and parokar on
behalf of the rest of the applicants, do hereby
verify that the contents of paras 1 to 21 of the
Rejoinder Affidavit are true to my personal knowledge
and belief and I have nothing suppressed in the
affidavit any material fact.

Lucknow:

पद्वी लाल
Applicant.

Dated: August 17, 1994.
Nov

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Regd. A/D
23-A, Thornhill Road
Allahabad. 211 001

Registration O.A. No. 386 of 1990 (L)

No. CAT/Alld/Jud

~~UNION OF INDIA~~

Versus

Applicant(s)

~~UNION OF INDIA & OTHERS~~

Respondent(s)

1. UNION OF INDIA THROUGH ITS GENERAL MANAGER M.RLY. BARODA HOUSE NEW DELHI.
2. DIVISIONAL RAILWAY MANAGER M.RLY. HAZRATGANJ LUCKNOW.
3. STATION SUPERINTENDENT M.RLY. LUCKNOW.
4. ASSISTANT PERSONNEL OFFICER M.RLY. HAZRATGANJ LUCKNOW.

Please take notice that the applicant above named has presented an Application a copy of whereof is enclosed herewith which has been registered in this Tribunal and the Tribunal has fixed 09 Day of 01.1991 For. FINAL HEARING.

If, no appearance is made on your behalf, your pleader of ny sone one duly authorised to Act and plead on your behalf in the said application, it will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal this 04. Day .12.90 of 1990.

For Deputy Registrar
(Judicial)

ENCL: COPY OF PETITION WITH COURT'S ORDER DATED 28.11.90

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

C.A.NO. 386 of 1990(L)

Ganga Charan	Applicant
	Versus	
Union of India	Respondents.

28.11.1990.

Hon'ble Mr. Justice K. Nath, V.C.
Hon'ble Mr. M.M. Singh, A.M.

Admit.

Issue notice to respondents to file
a counter within four weeks to which the appli-
cant may file a rejoinder within two weeks there-
after. List for final hearing on 09.01.1991.

Sd/-
A.M.

Sd/-
V.C.

// True Copy //

Ms/

6/12/90
RECEIVED
CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench
LUCKNOW

अदालत श्रीमान " Before the District Judge
वादी मुद्दे Prisoner, Lucknow

प्रतिवादी मुद्दालेख का दस्तावेजनामा
O. A. No. 3809/1390 वादी मुद्दे
Grace & Co. Lucknow प्रतिवादी मुद्दालेख
नं० मुद्दमा तस 19 पेजी की ता. 1/11/13
अमर लिखे मुद्दमे में अपनी ओर से Siddharth Verma
S. Siddharth Verma एडवोकेट

महोदय
वकील

जो अपना वकील नियुक्त करके प्रतिज्ञा करता हूँ और लिखे देता हूँ इस मुद्दमे में वकील महोदय स्वयं अथवा अन्य वकील द्वारा या जो कुछ पैरवी व जवाब देहो व प्रमाण के या अन्य कोई कागज दाखिल करे या लौटा दे या हमारी ओर से डिगरी जारी करावे और समया वसूल करे या सुलहनामा वगा इकताल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करे और तसदीक करे या मुद्दमा उठाने या कोई समया जमा करे या हमारी या पेचिश करी आनी का दाखिल किया समया अपने या हमारे हस्ताक्षर युक्त दस्तावेज से लेवे या पंच नियुक्त करे वकील महोदय हमारा को गई वड कार्यवाही हमको सर्वथा स्वीकार है और लोगो में यह भी स्वीकार करता हूँ कि मैं हर पेजी स्वयं या किसी अपने पैराक्षर को भेजता रहूँगा अगर मुद्दमा अदम पैरवी में एक तरफा मेरे पैराक्षर पैसला हो जाता है उसको जिम्मेदारी मेरी वकील पर न होगी। इस लिखे यह दस्तावेजनामा लिख दिया कि प्रमाण रहे और समय पर अम आवे।

साक्षी गवाह

साक्षी गवाह

दिनांक

महीना

नाम अदालत

नं० मुद्दमा

नं०

Accepted
Siddharth

SIDDHARTH VERMA

A. VOCATE

C-15, K-Road

Mohanager Extension

Lucknow-226 006

प/